IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 64 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI KARSANBHAI NAGAR

Versus

STATE OF GUJARAT

Appearance:

MR ZUBIN F BHARDA for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/03/2000

ORAL JUDGEMENT

1. Sub-Divisional Magistrate, Godhra passed the order on September 20, 1999 in exercise of the powers under section 56(b) of the Bombay Police Act, 1951

(hereinafter referred to as the "Act") externing the petitioner - Rameshbhai Karsanbhai Nagar of Godhra for a period of two years from the territories of Districts of Panchmahals, Vadodara, Kheda, Sabarkantha and Dahod. The Externing Authority prior to passing the above order issued a notice on April 22, 1999 upon the petitioner as required under section 59 of the Act wherein he stated that three offences are registered against the proposed externee. Out of which two are under the Indian Penal Code and one under the Bombay Prohibition Act. It was stated that, the proposed externee is headstrong person is always armed with deadly weapons and is indulging in robbing passersby, and therefore, he is proposed to be externed from the territories of districts of Panchmahals, Dahod, Vadodara, Kheda and Sabarkantha. The externing authority after concluding the externment proceedings, passed the impugned order. The said order was carried in appeal by the externee before the appellate authority as provided under section 60 of the Act. The appellate authority after considering the contentions raised observed that, it is found appropriate to ask the externee to furnish a surety and execute a bond in lieu of the externment order and ultimately directed to execute the bond of Rs.25,000/- and to furnish two sureties of the like amount.

2. The petitioner having been aggrieved by the said orders has approached this court with this petition assailing the notice, externment order and the order of the appellate authority on various grounds.

3. Mr.Bharda, learned advocate appearing for the petitioner restricted his arguments to the ground that the externing authority has taken into consideration the offences registered under the Bombay Prohibition Act while passing the order under section 56(b) of the Act. These offences could not have been considered, and therefore, the order is passed on extraneous and irrelevant material, and therefore, it may be quashed. The second fold of Mr.Bharda's argument is that, notice is vague. It does not disclose the area of alleged operations of the petitioner and approximate time of the operations. The last submission was that, there were no ground available with the externing authority for externing the petitioner from contiguous districts. No reasons are given, and therefore, the order passed is bad in law, the petition may, therefore, be allowed.

3.1 Assailing the order of Appellate Authority, Mr.Bharda submitted that the Appellate Authority could not have passed the order of furnishing sureties and

executing Bond. He further submitted that the Appellate Authority has erred in not considering the defects in the externment order, pointed out to it and therefore that order also may be quashed.

4. Mr.Dave, learned Additional Public Prosecutor has opposed this petition. He submitted that, the appellate authority has set aside the externment order, and therefore, no interference is called for. The petition, may, therefore, be dismissed.

5. Considering the rival side's contention, if the order of the appellate authority is seen, it is clear that, the appellate authority under the Act has not changed the reasoning and conclusions arrived at in order of externment. The authority does not set aside the order of the externment. It has only modified/varied the order of externment by substituting the externment order with order for furnishing the surety. The material considered and grounds stated by the externing authority for passing the order have remained undisturbed and as such it cannot be said that the order of externing authority is set aside by the Appellate Authority.

6. Now considering the submissions made by Mr.Bharda, it is apparent that the notice as well as externment order are based on three offences registered against the externee. Two of which are punishable under section 379 and Sections 323, 504 and 506(2) of the Indian Penal Code respectively. Third offence is under the Bombay Prohibition Act - Sections 85 and 66(1). The order makes it clear that it is passed under section 56(b) of the Act. If, section 56(b) of the Act is seen, the criteria for passing the order are reasonable ground for believing that the person is engaged or is about to be engaged in commission of an offence involving force or violance or an offence punishable under Chapters 12, 16 and 17 of the Indian Penal Code or in the abetment of any such offences and that when the authority is of the opinion that, witnesses are not willing to come forward to give evidence in public against the said person by the reason of apprehension on their part as regards safety of their persons or property, then the order can be passed. The authority has taken into consideration an offences registered under the Bombay Prohibition Act. It does not form the part of requirement of section 56(b) of the Act, and therefore, authority can be said to have passed impugned order on irrelevant and extraneous material which would vitiate the order. The order, therefore, cannot be sustained. The petition deserves to be allowed on this ground alone.

7. Mr.Bharda, learned advocate for the petitioner, at this stage does not press for verdict on other grounds raised by him during the course of the arguments.

8. The petition, is allowed. Impugned order passed by the learned Sub-Divisional Magistrate, Godhra on September 20, 1999 in Externment Case No.3/99 is hereby quashed and set aside, so also the order of the appellate authority passed on January 11, 2000 in the appeal arising out of the said order is also quashed and set aside. Rule is made absolute.

(A.L.Dave,J.)

(pathan)